

## CCRB INVESTIGATIVE RECOMMENDATION

|  |   |                           |   |   |                                 |
|--|---|---------------------------|---|---|---------------------------------|
| Investigator:<br>Krista Kano                     | Team:<br>Team # 2   | CCRB Case #:<br>201403333 | <input checked="" type="checkbox"/> Force             | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |   |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.                 | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Tuesday, 03/11/2014 4:34 PM  | Location of Incident:<br>Continental Place and Lockman Avenue | Precinct:<br>121          | 18 Mo. SOL<br>9/11/2015                               | EO SOL<br>9/11/2015                           |                                 |
| Date/Time CV Reported<br>Thu, 04/10/2014 9:46 AM | CV Reported At:<br>CCRB                                       | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Thu, 04/10/2014 9:46 AM |   |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. Officers          |        |        | 121 PCT |
| 2. POM Michael Smith | 18095  | 937422 | 121 PCT |
| 3. POM Omar Elsayed  | 06763  | 950376 | 121 PCT |
| 4. SSA John Todaro   | 05234  | 903307 | 121 PCT |
| 5. POM Emmanuel Kwo  | 01403  | 944715 | 121 PCT |
| 6. POM Besim Pelinku | 29412  | 946100 | 121 PCT |

| Officer(s)          | Allegation   | Investigator Recommendation |
|---------------------|--|-----------------------------|
| A.SSA John Todaro   | Abuse: Sgt. John Todaro participated in the stop of the car in which § 87(2)(b) and § 87(2)(b) were occupants. |                             |
| B. Officers         | Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)  |                             |
| C.POM Omar Elsayed  | Discourtesy: PO Omar Elsayed spoke discourteously to § 87(2)(b) and § 87(2)(b)                                 |                             |
| D.POM Michael Smith | Discourtesy: PO Michael Smith spoke discourteously to § 87(2)(b) and § 87(2)(b)                                |                             |
| E.POM Emmanuel Kwo  | Discourtesy: PO Emmanuel Kwo spoke discourteously to § 87(2)(b) and § 87(2)(b)                                 |                             |
| F.SSA John Todaro   | Discourtesy: Sgt. John Todaro spoke discourteously to § 87(2)(b) and § 87(2)(b)                                |                             |
| G.POM Omar Elsayed  | Abuse: PO Omar Elsayed searched the car in which § 87(2)(b) was an occupant.                                   |                             |
| H.POM Michael Smith | Abuse: PO Michael Smith searched the car in which § 87(2)(b) was an occupant.                                  |                             |
| I.POM Omar Elsayed  | Abuse: PO Omar Elsayed damaged § 87(2)(b)s property.   |                             |
| J.SSA John Todaro   | Abuse: Sgt. John Todaro frisked § 87(2)(b)   |                             |

| Officer(s)           | Allegation                                 | Investigator Recommendation |
|----------------------|--|-----------------------------|
| K.POM Michael Smith  | Abuse: PO Michael Smith frisked § 87(2)(b) |                             |
| § 87(4-b) § 87(2)(g) |  |                             |
| § 87(4-b) § 87(2)(g) |  |                             |
| § 87(4-b) § 87(2)(g) |  |                             |

### Case Summary

On April 10, 2014, § 87(2)(b) called the CCRB to file a complaint regarding three incident dates (encl. 3A-3C). § 87(2)(g)

On March 11, 2014 at 4:30 p.m., § 87(2)(b) and § 87(2)(b) were driving § 87(2)(b) who had just been stabbed in the leg, when officers stopped them on Continental Street and Lockman Avenue in Staten Island. § 87(2)(b) and § 87(2)(b) were arrested. The following allegations resulted:

- **Allegation A—Abuse of Authority: Sgt. John Todaro participated in the stop of the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
- **Allegation B—Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)**  
§ 87(2)(g)
- **Allegation C—Discourtesy: PO Omar Elsayed spoke discourteously to § 87(2)(b) and § 87(2)(b)**
- **Allegation D—Discourtesy: PO Michael Smith spoke discourteously to § 87(2)(b) and § 87(2)(b)**
- **Allegation E—Discourtesy: PO Emmanuel Kwo spoke discourteously to § 87(2)(b) and § 87(2)(b)**
- **Allegation F—Discourtesy: Sgt. John Todaro spoke discourteously to § 87(2)(b) and § 87(2)(b)**
- **Allegation H—Abuse of Authority: PO Michael Smith searched the car in which § 87(2)(b) was an occupant.**
- **Allegation I—Abuse of Authority: PO Omar Elsayed damaged § 87(2)(b)'s property**
- **Allegation J—Abuse of Authority: Sgt. John Todaro frisked § 87(2)(b)**  
§ 87(2)(g)
- **Allegation G—Abuse of Authority: PO Omar Elsayed searched the car in which § 87(2)(b) was an occupant.**  
§ 87(2)(g)
- **Allegation K—Abuse of Authority: PO Michael Smith frisked § 87(2)(b)**  
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)

- § 87(4-b) § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

This case was not mediation eligible.

## Results of Investigation

### Civilian Statements

**Victim:** § 87(2)(b)

- § 87(2)(b) *is a 5'9" tall, 149-pound, black man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- § 87(2)(b)

### CCRB Statement

On June 5, 2014, § 87(2)(b) was interviewed at Riker's Island (encl. 4E-4F).

On March 11, 2014 between 2 p.m. and 3 p.m., later determined by the investigation to be 4:34 p.m., § 87(2)(b) helped § 87(2)(b) walk to § 87(2)(b)'s dark blue Nissan that was parked in the driveway of § 87(2)(b). § 87(2)(b) was holding his leg and required help because he had been stabbed. § 87(2)(b) drove, with § 87(2)(b) in the front passenger seat, § 87(2)(b) behind § 87(2)(b) and § 87(2)(b) behind § 87(2)(b). § 87(2)(b) observed officers in a bright blue Ford parked across the street.

Officers stopped the vehicle with the civilians inside on Continental Street and Lockman Avenue. PO Omar Elsayed, Sgt. John Todaro, PO Emmuel Kwo and PO Michael Smith exited their vehicle (see enclosures for descriptions).

Each of the officers had their guns drawn and all officers ordered § 87(2)(b) and § 87(2)(b) to roll down the windows. Each officer said, "Shut the fuck up," and, "Don't fucking move." PO Elsayed approached § 87(2)(b)'s window, PO Kwo approached § 87(2)(b)'s window, PO Smith approached § 87(2)(b)'s window and Sgt. Todaro approached § 87(2)(b)'s window. The officers all pointed their guns at the civilians.

Officers removed everyone from the vehicle. PO Smith opened § 87(2)(b)'s door but let § 87(2)(b) get out of the vehicle himself because § 87(2)(b) said he had been stabbed.

§ 87(2)(b) and § 87(2)(b) laid down on their stomachs on the sidewalk. Sgt. Todaro and PO Kwo stayed with them and kept their guns pointed at the ground. § 87(2)(b) stood leaning against the vehicle.

PO Smith asked where the gun was. PO Elsayed said there had been a shooting across the street from § 87(2)(b). § 87(2)(b) observed PO Elsayed and PO Smith then search the car for five to ten minutes. PO Elsayed searched the front two seats, the glove compartment, and the center console. PO Elsayed intentionally broke off a black piece of the front passenger door

during the search. PO Smith searched the back seats and the trunk. The officers did not find anything in the car and did not ask permission to search it before doing so.

While § 87(2)(b) lay on the ground, Sgt. Todaro frisked § 87(2)(b)'s legs. Sgt. Todaro swiped § 87(2)(b)'s buttocks and with his hand and cupped § 87(2)(b)'s genitals. PO Kwo frisked § 87(2)(b)'s legs and waist and swiped his buttocks. PO Kwo said he found something on § 87(2)(b).

One of the officers called an ambulance for § 87(2)(b). When he left for the hospital, § 87(2)(b) and § 87(2)(b) were still on the ground. § 87(2)(b) was not arrested.

### **Attempts to Contact Civilians**

Between April 14, 2014 and May 28, 2014, § 87(2)(b) was called three times, sent two letters, and missed two interviews. Between April 17, 2014 and May 12, 2014, § 87(2)(b) was called twice and missed two interviews. On April 17, 2014 he came to the CCRB to provide a statement regarding multiple CCRB cases, but left before providing a statement regarding this case. A search of the New York Department of Correction showed that neither § 87(2)(b) nor § 87(2)(b) were incarcerated and neither provided a statement. § 87(2)(b) signed and returned a withdrawal letter on June 14, 2014 (encl. 9A).

### **NYPD Statements:**

#### **Subject Officer: PO OMAR ELSAYED**

- *PO Elsayed is a 6' tall, 230-pound Hispanic man with black hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On March 11, 2014, PO Elsayed worked from 12 p.m. to 8:35 p.m. with PO Kwo. They were assigned to Anti-Crime, were in an unmarked blue Impala #§ 87(2)(b) and were in plainclothes.*

### **Memo book**

PO Elsayed had no memo book entries regarding this incident (encl. 5A-5C).

### **CCRB Statement**

On September 17, 2014, PO Elsayed was interviewed at the CCRB (encl. 5F-5G). On October 21, 2014, PO Elsayed answered follow up questions (encl. 5I). The statements were combined.

On March 11, 2014 around 4:30 p.m., PO Elsayed and PO Kwo responded to a call of shots fired at § 87(2)(b) in Staten Island. PO Smith, PO Pelinku, and Sgt. Todaro also responded in a separate police vehicle.

§ 87(2)(e), § 87(2)(f)

PO Elsayed knows the house as a place where there are often fights and shootings. There were four individuals outside whom PO Elsayed knew from previous incidents. § 87(2)(b) was in the driver's seat of a parked vehicle, and § 87(2)(b) walked back and forth from the house and the car. § 87(2)(b) walked slowly outside of the apartment, but PO Elsayed did not observe any injuries on him. § 87(2)(b) sat in the front passenger seat with § 87(2)(b).

PO Elsayed and PO Kwo observed the civilians for two to five minutes. When they drove away, PO Elsayed and PO Kwo called PO Smith, PO Pelinku and Sgt. Todaro for backup.

PO Elsayed and PO Kwo followed the vehicle towards Grandview Avenue and Continental Street. When the other officers responded, they stopped the car. All of the officers exited their vehicles. PO Elsayed exited with his gun drawn because § 87(2)(b) and § 87(2)(b) were suspected to be involved in the shots fired. PO Elsayed did not know if the other officers had their guns drawn.

PO Elsayed approached the driver's door and instructed the people in the car to show their hands, to which they complied. He did not say, "Don't fucking move," or "Shut the fuck up" and did not hear another officer make those statements.

Each person in the car was instructed to get out of the car and was frisked for safety because they were suspected of being involved in the shots fired. PO Elsayed did not know if anything was recovered from the frisks. No one was physically removed from the vehicle and everyone was compliant. PO Elsayed watched the remaining occupants of the vehicle as each person was removed. He did not see anyone reach for their waistbands or pockets. PO Elsayed did not frisk anyone and did not know who was frisked by whom.

The officers initially believed § 87(2)(b) had been shot, and then realized that he had been stabbed. They called an ambulance for him. PO Elsayed focused his attention on § 87(2)(b) and § 87(2)(b). He asked them what had happened to § 87(2)(b) but they did not answer him.

PO Elsayed believed the vehicle was searched in the lunge-able, grab-able areas, but did not recall if he searched the car or another officer. He did not enter the glove compartment, center console, or the trunk and did not recall if another officer did so. He did not damage the vehicle and did not observe any damages to the vehicle. He did not see an officer damage the car.

The car was taken to the precinct and was vouchered. An inventory check was completed, but PO Elsayed was unsure of who conducted the search.

**Subject Officer: PO MICHAEL SMITH**

- *PO Smith is a 5'9" tall, 185-pound white man with brown hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On March 11, 2014, PO Smith was assigned to Anti-Crime from 12 p.m. to 8:35 p.m. with Sgt. John Todaro and PO Besim Pelinku. They were in plainclothes and were assigned to a teal Ford fusion #§ 87(2)(b).*

**Memo book**

PO Smith's memo book entries were consistent with his CCRB statement (encl. 5K-5L).

**Stop and Frisk Report**

PO Smith observed § 87(2)(b) for 12 minutes and observed actions indicative of casing a victim or location. § 87(2)(b) wore clothes which were commonly used in the commission of a crime and his actions were indicative of engaging in a drug transaction. The stop area had a high incidence of a crime and § 87(2)(b) was associating with people known for their criminal activity. § 87(2)(b) responded to officers' questions evasively, falsely or inconsistently. § 87(2)(b)

§ 87(2)(b) refused to comply with officers' directions and he made furtive movements. PO Smith felt a hard object and searched § 87(2)(b). Four decks of heroin were recovered (encl. 5P-5Q).

**Arrest Report** § 87(2)(b)

The arrest report was consistent with PO Smith's CCRB statement. Four decks of heroin were found on § 87(2)(b)'s person (encl. 5M-5O).

**CCRB Statement**

On September 23, 2014, PO Smith was interviewed at the CCRB (encl. 5T-5U). § 87(2)(g)

PO Smith, PO Pelinku and Sgt. Todaro drove to § 87(2)(b) and watched the house, a known hangout of the § 87(2)(b) gang, because he believed the people in the house had something to do with the shooting. They did not receive any descriptions of the shooters.

PO Smith observed the house for about 10 minutes. § 87(2)(b) drove around the block two to three times. PO Smith had never seen § 87(2)(b) before. PO Smith believed he was waiting for the various marked police cars to disperse from the area before he parked in front of § 87(2)(b) which PO Smith stated is indicative of a drug transaction.

§ 87(2)(b) parked in front of the house, and then § 87(2)(b) and § 87(2)(b) helped § 87(2)(b) who appeared to be injured, to the car. PO Smith indicated that § 87(2)(b) and § 87(2)(b) are known § 87(2)(b). They drove off at a high rate of speed towards Continental Place and Lockman Avenue and then stopped the car.

PO Smith, PO Pelinku, Sgt. Todaro, PO Elsayed, and PO Kwo exited their police vehicles without their guns drawn. PO Smith approached the driver and did not know where the other officers were.

PO Smith instructed § 87(2)(b) to turn the car off and § 87(2)(b) complied. PO Smith instructed everyone to step out of the vehicle and they did so. PO Smith did not hear officers use discourteous language.

Everyone was instructed to move to the rear of the vehicle and they complied. PO Smith separated § 87(2)(b) from the rest of the occupants. PO Smith believed that § 87(2)(b) had been shot because there was blood on his pants and his pants were ripped. He asked § 87(2)(b) what happened, if someone shot him, did he see who shot him, and if there was an argument. § 87(2)(b) did not respond to the questions and told PO Smith to just look at his leg. PO Smith then called an ambulance for § 87(2)(b).

As he spoke to § 87(2)(b) PO Smith did not pay attention to the other occupants of the car. He did not see an officer frisk § 87(2)(b).

PO Smith turned his attention toward § 87(2)(b) whose hands were in his pockets. PO Smith instructed him to take his hands out of his pockets. § 87(2)(b) did so, but then returned his hands to his pockets, which happened two to three times. § 87(2)(b) had two bulges in his front pants pockets which PO Smith could not describe.

PO Smith asked what the bulges were and § 87(2)(b) said they were his wallet and cellphone. PO Smith instructed him to take out his wallet and cellphone, which § 87(2)(b) did. When he removed these items, the bulges were no longer there. PO Smith asked § 87(2)(b) if he had anything else in his pockets that he should not have, and § 87(2)(b) said that he had drugs. § 87(2)(b) told PO Smith where the drugs were, but at the time of the interview, PO Smith did not recall their location. PO Smith recovered the drugs and handcuffed § 87(2)(b).

PO Smith did not enter or search the vehicle and did not see another officer do so. PO Smith did not know what happened to the car at the conclusion of the incident and did not know if it was vouchered. He did not see an inventory search conducted on the car. He did not see PO Elsayed damage a part of the front passenger door. He did not observe any damage to the car and did not hear any complaints that the car had been damaged.

An ambulance arrived to transport § 87(2)(b) to the hospital and § 87(2)(b) was transported to the stationhouse. PO Smith did not remember who transported § 87(2)(b).

**Subject Officer: PO EMMANUEL KWO**

- *PO Kwo is a 6'2" tall, 200-pound black man with black hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On March 11, 2014, PO Kwo was assigned to Anti-Crime from 12 p.m. to 8:35 p.m. with PO Omar Elsayed. They were in plainclothes and were assigned to vehicle #§ 87(2)(b) an unmarked blue Impala. At the time of the incident, PO Kwo was assigned to the 121<sup>st</sup> Precinct. Since the incident he has been transferred to the 43<sup>rd</sup> Precinct and has been promoted to sergeant.*

**Memo book**

PO Kwo had no memo book entries regarding this incident (encl. 5W-5X).

**CCRB Statement**

On October 15, 2014, PO Kwo was interviewed at the CCRB (encl. 5AA-5BB). § 87(2)(g)

There is a permanent post near the intersection at § 87(2)(b) due to the high incident of narcotics and weapons at § 87(2)(b) where § 87(2)(b) and § 87(2)(b) frequent. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) PO Kwo was previously involved in § 87(2)(b) § 87(2)(b)'s arrest for a loaded firearm and PO Elsayed previously interacted with § 87(2)(b) regarding narcotics and guns.

When PO Kwo arrived at the location, there was not a crowd. § 87(2)(b) exited § 87(2)(b) and was limping, favoring his left side. PO Kwo did not know if he was injured or if he was walking awkwardly because he had a weapon.

§ 87(2)(b) drove away at a speed which was over the speed limit. Because they were leaving the scene of a shooting and because § 87(2)(b) was limping, PO Kwo believed § 87(2)(b) was involved in the shooting. Sgt. Todaro's police vehicle followed § 87(2)(b) and PO Kwo followed behind Sgt. Todaro.



Some of the officers exited their cars with their guns drawn, but PO Kwo did not recall which officers. PO Kwo did not have his gun drawn. PO Kwo denied saying or hearing officers use profanity. Officers told § 87(2)(b) to put the car in park and told everyone to keep their hands visible. The remaining occupants were ordered out of the car and also sat on the curb. He did not recall seeing an officer or Sgt. Todaro frisk § 87(2)(b) PO Kwo denied frisking § 87(2)(b)

Sgt. Kwo saw PO Elsayed enter the car and do a “quick, cursory look” for weapons in the reachable, grab-able area. PO Kwo did not recall if he entered the glove compartment, the center console, or the trunk. PO Elsayed was in the front and back seat. PO Kwo did not recall searching the car. He did not see PO Smith or any additional officer search the car. PO Kwo did not see PO Elsayed damage a portion of the door and he did not hear the civilians complain that officers had damaged the car.

The detectives who responded wanted the car taken to the stationhouse for evidence of the shooting and for the remaining occupants of the car to be brought back to the stationhouse for questioning. Officers who were not part of the Anti-Crime team secured and transported the car.

**Subject Officer: PO BESIM PELINKU**

- *PO Pelinku is a 6'1" tall, 220-pound white man with black hair and hazel eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On March 11, 2014 PO Pelinku worked Anti-Crime from 12 p.m. to 8:35 p.m. with PO Michael Smith and Sgt. John Todaro. PO Pelinku was the operator of an unmarked car and was in uniform.*

**Memo book**

PO Pelinku had no memo book entries regarding this incident (encl. 5CC-5DD).

**CCRB Statement**

On October 14, 2014, PO Pelinku was interviewed at the CCRB (encl. 5GG). § 87(2)(g)

PO Pelinku knew § 87(2)(b) because he had previously arrested § 87(2)(b)'s brother in the house for possession of a loaded firearm. § 87(2)(b) was limping to the car and appeared injured, but PO Pelinku did not observe any injuries. § 87(2)(b) entered the car and they drove away at a high rate of speed. Because the vehicle was leaving the scene of a shooting with someone who appeared injured, PO Pelinku suspected they were involved in the shots fired. PO Pelinku followed the car driven by § 87(2)(b) and § 87(2)(b) stopped the car on Grandview Avenue and Continental Street.

PO Pelinku suspected that there were guns in the car because they had left the scene of shots fired at a high rate of speed, and so he approached the driver's side with his gun drawn. PO Pelinku did not know if other officers' guns were drawn.

PO Pelinku did not hear an officer say, “Shut the fuck up,” or “Don't fucking move.” He did not see Sgt. Todaro, PO Kwo, or any officer frisk § 87(2)(b) or § 87(2)(b) PO Pelinku did not recall if the car was searched. He did not recall seeing PO Elsayed or PO Smith enter and search the car. He did not recall if the car was damaged or if officers damaged the car.

**Subject Officer: SGT. JOHN TODARO**

- *Sgt. Todaro is a 6'1" tall, 255-pound white man with gray hair and blue eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On March 11, 2014, Sgt. Todaro was the Anti-Crime sergeant from 11:55 a.m. until 8:39 p.m. He was in plainclothes and was in vehicle #§ 87(2)(b) a green Ford Fusion, with PO Besim Pelinku and PO Michael Smith.*

**Memo book**

Sgt. Todaro's memo book entries were consistent with his CCRB statement (encl. 5II-5KK).

**CCRB Statement**

On October 2, 2014, Sgt. Todaro was interviewed at the CCRB (encl. 5NN-500). § 87(2)(g)

A crowd of 30-35 people were dispersing from in front of § 87(2)(b) Sgt. Todaro did not observe any suspicious activity. Sgt. Todaro, PO Pelinku and PO Smith drove around the block to assess the area.

Sgt. Todaro observed § 87(2)(b) and § 87(2)(b) hurriedly walk out of § 87(2)(b) into a car. § 87(2)(e), § 87(2)(f) § 87(2)(b) was leaning on § 87(2)(b) and § 87(2)(b) and appeared injured.

§ 87(2)(b) sped away from the scene. Because they were leaving the scene of a shooting, Sgt. Todaro decided to follow them. PO Kwo and PO Elsayed also followed in a separate police vehicle. Sgt. Todaro did not remember how PO Kwo and PO Elsayed knew to follow him. Sgt. Todaro believed that PO Kwo and PO Elsayed saw them follow § 87(2)(b) and followed as well.

Sgt. Todaro exited the vehicle with his gun drawn, pointed at the ground. He feared for his safety because they had just left a crime scene and § 87(2)(b) had appeared injured. Sgt. Todaro did not remember if the other officers had their guns drawn. Sgt. Todaro approached the rear passenger side. PO Kwo and PO Elsayed approached from the driver's side. Sgt. Todaro did not say and did not hear an officer say, "Shut the fuck up," or "Don't fucking move."

Sgt. Todaro spoke with § 87(2)(b) for a few minutes and called an ambulance. Officers instructed § 87(2)(b) and § 87(2)(b) to exit the car, and they did so. He did not see an officer frisk § 87(2)(b) or § 87(2)(b) and Sgt. Todaro himself did not frisk § 87(2)(b) Sgt. Todaro did not see PO Smith or PO Elsayed search the car and did not see PO Elsayed damage the car.

**NYPD Documents**

**Event** § 87(2)(b)

On March 11, 2014 at 2:56 p.m., an anonymous woman called 911 and stated that 15 people were fighting at § 87(2)(b) and that she heard shots fired. She could not provide a description on the firearm. She did not know if there were injuries. A woman named § 87(2)(b) called 911 at 2:57 p.m. and stated that there were about 20 high school students fighting and she heard one shot fired. They were Hispanic men and black men. She did not see

who shot the firearm. At 3:13 p.m., Sgt. 3 from the 121<sup>st</sup> Precinct, identified by the investigation as Sgt. Todaro, requested an ambulance to Continental Street and Lockman Avenue. He confirmed that a man was shot in the leg. At 3:15 p.m., the 121<sup>st</sup> Precinct's Commanding Officer, identified by the investigation as Capt. Kenneth Noonan, called a Level 1 mobilization at Continental Street and Lockman Avenue. At 3:21 p.m., Sgt. Todaro requested the ambulance again. At 3:25 p.m., Sgt. Todaro reported that an AIDED was not likely. At 3:52 p.m., Sgt. Todaro requested ESU to the location for evidence search. At 4:45 p.m., an anonymous woman called 911 and reported that the police had the perpetrator, identified by the investigation as § 87(2)(b) in custody. § 87(2)(b), § 87(2)(f)

At 6:10 p.m., Desk Sgt. Derek Knorr reported that the final disposition of the job was that another report was prepared (encl. 6A).

### **Stop and Frisk Log**

There was no stop and frisk report prepared for § 87(2)(b) (encl. 6EE).

### **Summons/Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of September 16, 2014, over three months after the filing deadline, with regard to the incident.

### **Civilians Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilians CCRB History**

- § 87(2)(b) is currently listed as a victim in open CCRB case number § 87(2)(b) (encl. 2I).

### **Subject Officers CCRB History**

- PO Elsayed has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. 2A-2B).
- PO Smith has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 2C).
  - § 87(4-b) § 87(2)(g)
- PO Kwo has been a member of the service for seven years and there are two substantiated CCRB allegations against him (encl. 2D).
  - In case 201301424, the Board substantiated stop and frisk allegations and recommended charges. The case is currently assigned to the CCRB's Administrative Prosecuting Unit.  
§ 87(4-b) § 87(2)(g)
- PO Pelinku has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2E).
- Sgt. Todaro has been a member of the service for 21 years and there are four substantiated CCRB allegations against him (encl. 2F-2H).

- In case 200400822, the Board substantiated a retaliatory summons allegation and recommended charges. In June 2005, the NYPD issued instruction.
- In case 200603776, the Board substantiated question/stop, threat of arrest and frisk allegations and recommended charges. In September 2007, the NYPD did not issue any discipline as they were duplicate charges.

## Conclusion

### Identification of Subject Officers

§ 87(2)(b) described four officers, matching the descriptions of PO Elsayed, PO Smith, PO Kwo, and Sgt. Todaro. § 87(2)(g)

§ 87(2)(b) stated that PO Kwo frisked § 87(2)(b) because PO Smith acknowledged frisking § 87(2)(b) and prepared the stop and frisk report for § 87(2)(b) the allegation is pleaded to him.

### Allegations Not Pleaded

§ 87(2)(g)

## Investigative Findings and Recommendations

**Allegation A—Abuse of Authority: Sgt. John Todaro participated in the stop of the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B—Force: Officers pointed their guns at § 87(2)(b)**

and § 87(2)(b)

§ 87(2)(b) stated that § 87(2)(b) helped him into a car because he had been stabbed. He saw officers watching him from a car across the street. Officers stopped their car with their guns drawn. PO Smith asked where the gun was and PO Elsayed said that there had been a shooting.

All officers stated that they responded to a call of shots fired, which was nearby § 87(2)(b)

§ 87(2)(b) All officers had prior knowledge of § 87(2)(b) § 87(2)(e), § 87(2)(f)

§ 87(2)(b) All officers stated that § 87(2)(b) appeared to be injured and that they drove away at a high rate of speed. All officers acknowledged stopping the car and stated that because § 87(2)(b) appeared injured and because they drove away at a high rate of speed, they believed the civilians were involved in the shots fired.

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) Todaro. Sgt. Todaro did not recall speaking with PO Elsayed prior to the car stop.

PO Elsayed, PO Pelinku, and Sgt. Todaro acknowledged approaching the car with their guns drawn, but could not account for the other officers' actions.

The event showed that § 87(2)(b) called 911 reporting shots fired and within 20 minutes, Sgt. Todaro called for an ambulance regarding the car stop.

Officers may stop a vehicle when they have reasonable suspicion, in view of the totality of circumstances, that its occupants have been engaged in criminal conduct. People v. Andrews, 816 N.Y.S.2d 698 (2005) (encl. 1A-1H). Officers may draw their weapons when they have a reasonable fear for their safety. Dept. v. Gliner, OATH Index No. 955/00 (encl. 1I-1AA).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C—Discourtesy: PO Omar Elsayed spoke discourteously to** § 87(2)(b)

**and** § 87(2)(b)

**Allegation D—Discourtesy: PO Michael Smith spoke discourteously to** § 87(2)(b)

**and** § 87(2)(b)

**Allegation E—Discourtesy: PO Emmanuel Kwo spoke discourteously to** § 87(2)(b)

**and** § 87(2)(b)

**Allegation F—Discourtesy: Sgt. John Todaro spoke discourteously to** § 87(2)(b)

**and** § 87(2)(b)

**Allegation H—Abuse of Authority: PO Michael Smith searched the car in which** § 87(2)(b)  
**was an occupant.**

**Allegation I—Abuse of Authority: PO Omar Elsayed damaged** § 87(2)(b) **s property**

**Allegation J—Abuse of Authority: Sgt. John Todaro frisked** § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Todaro, PO Kwo, PO Elsayed and PO Smith approached the car and said “Shut the fuck up,” and “Don’t fucking move.” He further stated that PO Smith searched the car, that PO Elsayed broke a portion of the door off of § 87(2)(b) s car, and that Sgt. Todaro frisked § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) provided statements regarding this incident and § 87(2)(b) withdrew his complaint.

All interviewed officers denied using any discourteous language throughout the incident. All officers denied seeing PO Smith searching the car or seeing PO Elsayed damage the car. All officers denied hearing any of the vehicles occupants complain that officers had damaged the car. Only PO Elsayed acknowledged that § 87(2)(b) was frisked, but did not know by whom. There was no stop and frisk report prepared for § 87(2)(b).

§ 87(2)(g)

**Allegation G—Abuse of Authority: PO Omar Elsayed searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated that once everyone was removed from the car, PO Elsayed and PO Smith searched the car. PO Elsayed searched the front two seats, the glove compartment, and the center console. PO Smith searched the back seats and the trunk.

PO Elsayed stated that everyone was removed from the vehicle and were frisked for safety. The vehicle was searched, but PO Elsayed did not recall by whom. He did not recall searching the car. He stated that an inventory search was conducted later at the stationhouse. All other officers denied seeing PO Elsayed search the car, with the exception of PO Kwo, who stated that Elsayed searched the reachable, grab-able area. He did not recall seeing PO Elsayed search the glove compartment, the center console or the trunk. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Absent probable cause, an officer may not search a vehicle once the suspects have been removed and patted down without incident, as any immediate threat to the officers' safety has been eliminated. People v. Torres, 74 N.Y.2d 224 (1989) (encl. 1BB-1HH).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation K—Abuse of Authority: PO Michael Smith frisked § 87(2)(b)**

§ 87(2)(b) stated that once everyone was removed from the vehicle and the vehicle was searched, § 87(2)(b) was frisked. § 87(2)(b) provided no information about § 87(2)(b)'s conduct prior to the frisk and left the scene in an ambulance before the end of the incident. § 87(2)(b) signed a withdrawal form and no other civilians provided statements.

PO Smith acknowledged frisking § 87(2)(b) and stated that he did so because of § 87(2)(b)'s noncompliance with orders to remove his hands from his pockets, § 87(2)(b)'s evasive answers to questions, a bulge, and his association with § 87(2)(b) a known criminal. Further, PO Smith stated that § 87(2)(b) told him he was in possession of drugs. PO Elsayed stated that all civilians were frisked upon their removal from the vehicle, and all other interviewed officers denied seeing any officer frisk § 87(2)(b).

§ 87(2)(b) neither confirmed nor denied PO Smith's reasons for frisking § 87(2)(b) and provided no expository information of the circumstances leading to the frisk. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

[Redacted text block]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date